



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,426	07/13/2004	Javier Francisco Aprea	NL 020026	7432
24737 7590 02/04/2010 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER				
SAINT CYR, LEONARD				
ART UNIT		PAPER NUMBER		
2626				
MAIL DATE		DELIVERY MODE		
02/04/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/501,426

**Applicant(s)**

APREA ET AL.

**Examiner**

LEONARD SAINT CYR

**Art Unit**

2626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☒ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06/12/09 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/16/09 has been entered.

### ***Response to Arguments***

2. Applicant's arguments filed 11/16/09 have been fully considered but they are not persuasive.

Applicant argues that the claims have been amended, as appropriate, to show transformation or reduction of subject matter to different state of thing, and thus now renders the same as being directed to statutory subject matter (Amendment, pages 6, and 7).

The examiner disagrees, and points out that encoding and outputting audio data do not consider as transformation or reduction of subject matter to different state of thing, since those steps can be interpreted as manipulation of numbers, representing video/audio information.

3. Applicant's arguments, see pages 9, and 10, filed 11/16/09, with respect to claims 1 – 16 have been fully considered and are persuasive. The art rejection of claims 1 – 16 has been withdrawn.
4. Applicants argues that Fielder et al., do not teach that each respective audio frame index has a structure that includes a number pf blocks in a head overlap; a number of blocks in a tail overlap; and a number of blocks in between the head overlap and the tail overlap to a total number of blocks in the audio frame k minus the quantity of the sum of the head overlap plus the tail overlap, further wherein the head overlap comprises a length of only overlap O or overlap O+1 long, which enables each audio frame to be tagged via a 1-bit tag to indicate its size and differentiate between short and long audio frames, and wherein each block of the audio frame is tagged via 1-bit tag to indicate its redundancy so as to differentiate redundant and non-redundant blocks of the respective frame (Amendment, pages 9, and 10).

***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:
6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1 – 16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

Claims 1 – 16 define non-statutory processes because they merely manipulate an abstract idea (mathematical algorithm). The claimed process, a series of steps to be

performed on a computer, simply manipulates an abstract idea; does not have any post or pre computer process activity.

In the instant application, the disclosure is directed to any and every structure for carrying out the claimed functions, and not solely to specific structure.

Claims 1 – 16 reviewed in light of the specification, simply recite an abstract idea for encoding audio using a stream that carries audio and video data.

As can be seen by claims 1 – 16, these claims recite an abstract idea by setting forth the step of “providing a mean effective audio frame length  $F$  that equals a video frame length  $1/Fv$  over an integral number  $M$  video frames, varying lengths  $F$  of the audio frames in a defined sequence of frame lengths”. These steps are abstract ideas.

Reviewing each claim as whole fails to show the transformation or reduction of subject matter to a different state of thing. Providing a mean effective audio frame length  $F$  that equals a video frame length  $1/Fv$  over an integral number  $M$  video frames, is merely an abstract idea to encode audio data, not a different state or thing.

It is readily apparent that when claims 1 – 16 are each taken as a whole, the claims are directed to the preemption of an abstract idea, and thus are non-statutory.

**Claims 1 - 16** are rejected under 35 USC 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps to be performed, a statutory process under 35 USC 101 must be tied to another statutory category (such as a manufacture or a machine) or transform underlying subject matter (such as an article or material) to a different state or

thing. The steps in those claims can be performed manually without the use of a particular machine. Those claims could be done in a piece of paper, wherein digital signal processing (DSP) theory implemented in software codes, can be used to derive the effective audio frame length by varying lengths F of the audio input frame data; since the audio encoder is described in the specification, page 4, lines 12, and 13 as "an audio encoder (that may be implemented for example as a software component)". Thus, claims 1 - 16 do not define a statutory process.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEONARD SAINT CYR whose telephone number is (571) 272-4247. The examiner can normally be reached on Mon- Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richemond Dorvil can be reached on (571) 272-7602. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

Art Unit: 2626

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or (571) 272-1000.

LS

01/28/10

/Leonard Saint-Cyr/

Examiner, Art Unit 2626